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European Social Charter and European Economic and Social Council

Report[1]
Social, Health and Family Affairs Committee
Co-rapporteurs: Mr Henri C. J . HEYMAN, Belgium, and Mr Per HAEKKERUP, Denmark

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1. 1956 - 8th Session - First part

A. A. Draft Recommendation concerning a European Social Charte

The Assembly,

Considering that the European Convention on Human Rights has established an international guarantee for the protection, in the Member States of the Council of Europe, of the principal civil and political rights proclaimed in the Universal Declaration of Human Rights of 10th December, 1948;

Considering that it is desirable to conclude a further instrument designed to promote or ensure the exercise of the economic and social rights set out in the said declaration, and in the draft Covenant on economic, social and cultural rights prepared by the Commission on Human Rights of the United Nations;

Recalling its Opinion No. 5 (1953), in which it expressed its support for the proposal to conclude a European Social Charter, which would define the social aims of the Member States and serve as a guide for the future activities of the Council of Europe in the social field;

Noting that the Committee of Ministers has approved the proposal to conclude such a Social Charter and has entrusted the task of preparing it to the governmental Social Committee ;

Having taken note of the request of the Committee of Ministers that a joint meeting should be held to discuss the Social Charter between the governmental Social Committee and the competent committees of the Assembly;

Expressing the hope that such a meeting can be held in the near future, since the representatives of the Social Committee were unable to attend one before the opening of the Eighth Session of the Assembly;

Having considered the report of its Committee on Social Questions,

Approves the draft Social Charter appended hereto; and

Recommends that the Committee of Ministers should :

1. transmit this draft to the governmental Social Committee with instructions to be guided by the statement of the Assembly's wishes contained therein;
2. submit in due course the draft Social Charter elaborated by the Social Committee to the Assembly for its opinion.

B.

1. B. Draft European Social Charter - (as amended by the Committee on Social Questions on 9th March, 1956)

The Governments signatory hereto, being members of the Council of Europe,

Considering that...,

Have agreed as follows :

1.1. PART I - Principles and objectives of social policy

The object of this Charter is to promote a progressive improvement in the well-being of the nationals of the High Contracting Parties by a continuous rise in living standards and by the equitable sharing of resources and burdens, in order to ensure the dignity of man affirmed in the European Convention of Human Rights.

To this end the High Contracting Parties hereby proclaim their determination to pursue the following objectives of social policy.

1. Realising that the standard of living depends primarily on economic conditions, the High Contracting Parties will endeavour to promote the steady expansion of production and trade among themselves, full employment, the fair distribution of resources and sharing of burdens, and the stability of their economies.
2. The High Contracting Parties regard economic policy not as an end in itself, but as a means of attaining social objectives, which in turn reflect the moral and spiritual values inherent in the common heritage of the European peoples.
3. In carrying out their economic and social policy, the Governments will adopt no measures incompatible with human dignity and the integrity of the family. The supreme aim of their social policy will be to develop the human personality and to allow the individual the opportunity of exercising his natural gifts to the full.
4. The High Contracting Parties recognise that the family is of basic social and moral importance to society. They accept as one of their aims and responsibilities to create or maintain such conditions as will protect the family and facilitate the discharge of family responsibilities. They will endeavour to take all appropriate measures to assist the individual and the family to adjust themselves to modern social and economic conditions.
5. The High Contracting Parties, whilst encouraging the fullest discharge of individual and family obligations towards children, accept the responsibility of taking measures to protect the health and welfare and ensure the education of all children and young persons regardless of family circumstances. They recognise that motherhood should be protected regardless of the marital status of the mother.
6. The first essential is to ensure the exercise of the right to work. The maintenance of full employment in all European countries must be the constant preoccupation of the High Contracting Parties.
7. Nevertheless, work is not an end in itself. The High Contracting Parties recognise it as one of the conditions for the development of the human personality that workers should have a share in the fruits of their labours, particularly by participation in the management and the profits of the undertaking by which they are employed.
8. The High Contracting Parties regard it as a duty arising from the most elementary principles of human solidarity that they should organise assistance for the less favoured sections of their populations.
9. The High Contracting Parties are opposed to all forms of discrimination on grounds of sex, race, colour, language, religion, property, nationality, national or social origin, or political or other opinions.
10. The High Contracting Parties will endeavour to ensure that the full benefits of the measures set out in this Charter are extended to all groups and sectors of the population.
11. The High Contracting Parties consider themselves collectively responsible for the economic expansion of their metropolitan underdeveloped areas, and bound to develop them by all means within their power.

12. They will not derive profit from exploitation of the living conditions of the peoples politically or economically dependent on them. They recognise that they are responsible for the economic and social development of territories under their jurisdiction, in collaboration with the local populations and, where appropriate, with qualified international organisations.

13. The High Contracting Parties regard it as an embodiment of the principles of democracy that appropriate institutions should be created to enable employers', workers' and consumers' organisations to participate in the formulation of economic policy at all stages and in all sectors.

14. The High Contracting Parties recognise that the effective enjoyment by all of the benefits set out in this Charter depends not only on the action of the public authorities in ensuring the rights of individuals, but also on the action of individuals in discharging their duties to other individuals and to the community in which they live.

15. The High Contracting Parties recognise that the welfare and prosperity of each of them depend on the welfare and prosperity of them all. Although the planning and implementation of social policy are essentially the concern of national, regional or local authorities, they consider that its full achievement depends, and will increasingly depend, on closer co-operation between them, so that social and economic rights may be ensured on a European as well as on a national level. For this purpose, they will endeavour, by means of joint consultation, to harmonise by stages their economic policies and their social legislation and practice, and to make the social and economic rights set forth in this Charter applicable in the territory of each for the nationals of all.

It shall be the aim of the High Contracting Parties to establish European standards of social welfare superior to those applied on a wider international basis.

1.2. PART II - Economic and social rights

ARTICLE 1 - The right to work

1. The High Contracting Parties recognise that everyone is entitled to and should be enabled to earn his living in a freely accepted occupation.

2. With this in view they will :

a. accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of productive employment through the pursuance of policies which will ensure adequate opportunities for work;

b. fix national employment targets, prepare national man-power budgets, and establish long-term development programmes, including the planning of public works, which may be adapted to the changing employment situation.

3. The High Contracting Parties undertake to :

a. establish or maintain the freedom from any restrictions on the right to work[2], with the exception of those imposed by the need to assure the technical qualifications required in certain professions and those aiming solely at the protection of children, adolescents and women against the risks inherent in certain prescribed occupations;

b. protect effectively the right of the wage-earner freely to choose any available occupation;

c. establish or maintain both general and specialised free employment services;

d. promote vocational guidance and training.

ARTICLE 2 - The right to fair and stable conditions of work

1. The High Contracting Parties recognise that conditions of work should be such as to enable workers to find satisfaction in their work, develop their human personality, protect their health, and provide themselves and their families with an independent and decent livelihood. Within the limits of their constitutional and national procedures, they will take appropriate steps to secure such conditions, particularly through measures designed to secure for all workers fair wages, including a guaranteed minimum wage and a guaranteed weekly wage, reasonable possibilities of promotion and adequate time and facilities for leisure.

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2. It will be for the governmental Social Committee to examine the question whether this text excludes the " closed shop ".

2. They undertake to secure for every worker :

a. safe and healthy working conditions, defined by laws or regulations and guaranteed by effective labour inspection;

b. protection against arbitrary dismissal, including prohibition of dismissal on account of maternity, military service, and similar circumstances;

c. reasonable notice of dismissal;

d. the establishment of a minimum wage-fixing machinery in all fields not covered by regulations or collective agreements;

e. equal pay for equal work, particularly as between men and women, subject to any adjustments that may be necessary on account of variations in the cost of living in different areas;

f. a reasonable working week, to be progressively reduced to a 40-hour week, subject to essential adjustments for certain professions, with special rates for over-time;

g. a minimum of two weeks' annual holiday with pay and guaranteed weekly rest periods;

h. the possibility of retirement at the age of 65 at the latest, with a pension ensuring a decent living.

ARTICLE 3 - The right of children, adolescents and women to special measures of protection in their employment

1. The High Contracting Parties will take all appropriate steps to protect children, adolescents and women against the physical and moral hazards of their work and to enable women to carry out their maternal duties.

2. The High Contracting Parties undertake to take all necessary steps in order that :

a. the employment of child labour of under 14 years of age, and the employment of adolescents and women in work which is physically or morally injurious shall be punishable by law;

b. persons of under 16 years of age who are still subject to compulsory education may be employed only in such work as will not deprive them of their education;

c. the working day of persons under 16 years of age shall be in accordance with the needs of their development and particularly with their need for vocational training;

d. adolescents shall be entitled to not less than three weeks' annual holiday with pay;

e. expectant mothers shall be granted leave with pay before and after childbirth up to a total of at least 12 weeks.

ARTICLE 4 - The right of workers to be consulted on the management of the enterprise by which they are employed

The High Contracting Parties undertake to encourage the establishment or maintenance of organs of joint consultation and/or to take other appropriate measures, to ensure that workers have an opportunity to express their views about the general management of the enterprise by which they are employed.

ARTICLE 5

The High Contracting Parties undertake to supervise closely the enforcement of the measures taken in pursuance of Articles 2, 3 and 4, in particular by the introduction of joint labour inspectorates and tribunals.

ARTICLE 6 - The right to strike

The High Contracting Parties recognise the right to strike and will maintain the necessary procedures for the solution of labour disputes.

ARTICLE 7 - The right to form and foin Trade Unions

The High Contracting Parties recognise the right of workers to form trade unions, local, national or international, and to join trade unions of their choice, for the protection of their economic and social interests, subject only to the limitations set out in paragraph 2 of Article 11 of the European Convention on Human Rights and Fundamental Freedoms[3].

ARTICLE 8 - The right to a decent living, including adequate food, clothing and housing

The High Contracting Parties will :

a. promote the conditions in which adequate supplies of basic necessities will be made available at prices within the reach of all;

b. promote a policy of town planning and rural habitation such as will provide adequate numbers of moderately priced dwellings complying with satisfactory standards of comfort and hygiene.

ARTICLE 9 - The right to social security

1. The High Contracting Parties undertake to raise their social security systems to a satisfactory level, basing themselves on the standards laid down in the European Code of Social Security for the following types of services : medical care, benefits relating to sickness, unemployment, old age, employment injury and diseases resulting from employment, family benefits, maternity benefits, invalidity benefits and survivors' benefits.

2. The High Contracting Parties recognise the principle whereby social security and social and medical assistance shall be made available on the territory of each Party to the nationals of the other Parties, as provided in the European Interim Agreements on Social Security and the European Convention on Social and Medical Assistance.

3. The High Contracting Parties will take the necessary steps to safeguard social security benefits against the effects of depreciation of their currencies.

ARTICLE 10 - The right to a high standard of health

The High Contracting Parties will take all appropriate measures :

a. to ensure the reduction of infant mortality and provision for the heathy physical, mental and moral development of the child;

b. to improve nutrition, housing, sanitation, health education, recreation and other environmental health factors;

c. to prevent epidemic, endemic and other diseases ;

d. to organise services and facilities so that all may be assured of effective medical attention in the event of sickness.

ARTICLE 11 - Rights of the Family

1, With a view to ensuring the economic and social protection of family life, the High Contracting Parties will foster and protect the family as a fundamental unit of society.

2. They undertake to make available, or to encourage the provision of the following facilities and advantages :

a. the grant of allowances in proportion to the number of children;

b. measures to educate young persons for marriage;

c. cheap loans for the founding of homes;

d. preferentia l allocation of housing to families and(persons wanting to marry, and rent reductions for low income families with many children ;

e. allowances to families whose breadwinners are subject to military services;

f. tax reductions related to the size of the family;

g. organisation of home help services.

ARTICLE 12 - Rights of Mothers and Children

1. The High Contracting Parties will take all necessary measures for the effective protection of mothers and children, including the establishment or maintenance of appropriate institutions for the purpose.

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3. Article 11, paragraph 2, is worded as follows : - " N o restrictions shall he placed on the exercise of these rights other than such as are prescribed b y law and aro necessary in a democratic society in the interests of national security or public safety for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State ".

2. They undertake, for the protection of mothers :

a. to provide the necessary economic and other assistance during a reasonable period before and after childbirth, in all cases not covered by social security or otherwise;

b. to provide directly or in collaboration with appropriate voluntary organisations, a sufficient number of maternal and infant welfare centres.

3. They undertake, for the protection of children :

a. to establish or maintain specialised organs with powers to prevent the neglect of children ;

b. to ensure that every minor is provided with a guardian and that guardianship is regulated by law;

c. to provide special services for homeless children, for children and young persons who arc physically or mentally handicapped, and for juvenile delinquents.

ARTICLE 13 - Social services

1. The High Contracting Parties will directly or in collaboration with local authorities and appropriate voluntary organisations, establish or maintain social welfare services for aid and guidance to the individual in industrialised society.

2. They undertake to assure free legal advice and assistance to those who need it.

ARTICLE 14 - The right to education

1. The High Contracting Parties undertake to make primary education for children compulsory and free.

2. They will introduce progressive measures in order :

a. to make facilities for secondary education, in its different forms, including technical and professional training, available to everyone at least up to the age of 18 years and to make it increasingly free;

b. to ensure a basic education for those persons who have not received or have not completed their primary education;

c. to make university and other higher education accessible to all.

ARTICLE 15 - The choice of education

In the exercise of any functions which they assume in relation to education and to teaching, the High Contracting Parties will respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

1.3. PART III - Implementation of the Charter

ARTICLE 16

1. The High Contracting Parties agree that a programme of implementation should be drawn up in order to secure the progressive implementation of this Charter and the extension of its benefits to all groups and sectors of the population.

2. This programme shall be drawn up by the Social Committee of the Council of Europe and submitted to the Consultative Assembly for its opinion.

3. On the basis of the proposals of the Social Committee and the opinion of the Consultative Assembly, the Committee of Ministers shall approve the programme of implementation and forward it to the High Contracting Parties for action. At the same time it shall be communicated to the Consultative Assembly for information.

ARTICLE 17

1. The High Contracting Parties undertake to forward to the Secretary-General of the Council of Europe annual reports showing by what means and to what extent the programme of implementation is being realised in their respective territories, provided, however, that in cases where reports on the implementation of certain rights are sent to other international organisations, the Secretary-General shall arrange to obtain the information required from the latter.

2. The reports and information referred to in the preceding paragraph shall be submitted by the Secretary-General to the Social Committee of the Council of Europe, which shall then make its own report, indicating whether satisfactory progress is being made in the implementation of the Charter and, in appropriate cases, making recommendations for its more effective implementation.

ARTICLE 18

The reports and information referred to in paragraph 1 and the reports of the Social Committee referred to in paragraph 2 of the preceding Article shall be referred to the Consultative Assembly for its opinion. The Assembly shall examine them in accordance with such procedure as it shall itself determine and may make recommendations to the Committee of Ministers relating to the implementation of the Charter.

ARTICLE 19

1. The reports of the Social Committee referred to in paragraph 2 of Article 17, and any recommendations made by the Consultative Assembly in accordance with the provisions of Article 18, shall be considered by the Committee of Ministers, which shall decide what action to take thereon.

2. The decisions of the Committee of Ministers shall be communicated to the Consultative Assembly.

1.4. PART IV

ARTICLE 20

Nothing in this Charter shall limit or derogate from any of the economic, social or other human rights which may be ensured under the laws of any High Contracting Party or under any international agreement to which it is a party.

ARTICLE 21

1. In the event of war or of public danger threatening the life of the nation, each of the High Contracting Parties may take measures involving derogation from the obligations that it has assumed under this Charter, but only to the extent required by the situation and on condition that the measures taken are compatible with its other obligations arising under international law.

2. Any High Contracting Party exercising the above right of derogation shall keep the Secretary-General of the Council of Europe informed of the measures taken and the reasons therefor, and shall likewise inform him as soon as such measures cease to have effect.

ARTICLE 22

Any High Contracting Party may propose amendments to this Charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary- General shall transmit to the High Con-• tracting Parties any amendments so proposed, which shall then be considered by the representatives of the High Contracting Parties on the Social Committee of the Council of Europe. Any amendments thus approved shall be transmitted to all signatory Governments and shall-enter into force as soon as all the High Contracting Parties have informed the Secretary-General of their acceptance.

ARTICLE 23

1. A High Contracting Party may denounce the present Charter as far as it is concerned only after the expiry of five years from the date on which it became a Party to it and after six months' notice, contained in a notification addressed to the Secretary-General of the Council of Europe, who shall inform the other High Contracting Parties.

2. A Hig h Contracting Party which shall have ratified the present Charter and shall not have availed itself of the right of denunciation within the period laid down in paragraph 1 above, shall be bound thereby for a further period of five years, whereupon it may denounce the Charter as far as it is concerned on the expiry of each successive five years period.

3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Charter.

ARTICLE 24

1. This Charter shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

2. The present Charter shall enter into force after the deposit of five instruments of ratification.

3. As regards any signatory ratifying subsequently, the Charter shall come into force on the date of the deposit of its instrument of ratification.

4. The Secretary-General of the Council of Europe shall notify all the Members of the Council of the entry into force of the Charter, the names of the High Contracting Parties which have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

ARTICLE 25

The French and English texts of this Charter shall be equally authoritative.

2. C. Report by M. Heyman on the European Social Charter

2.1. 1. Introduction

On 9th July 1954, the Standing Committee adopted Order 58 in which it instructed the Committee on Social Questions to :

" begi n to prepare a draft Social Charter for submission to the Committee of Ministers and submit a preliminary report on this question at the second part of the Sixth Ordinary Session. "

In accordance with this Order, the Committee on Social Questions started work on a draft Social Charter and presented an interim report to the Assembly in September, 1954 (Doc. 312). The Assembly then instructed the Committee to continue with its work and present a draft Charter in the course of the Seventh Session (Minutes of Proceedings of 23rd September, 1954, Item 5).

This was duly done. A detailed draft was submitted in October, 1955 containing :

1. a Preamble, setting out the general principles on which the Charter was based;
2. a Preamble, setting out the general principles on which the Charter was based;
3. proposals for the creation of a European Economic and Social Council as an " organ of implementation " of the Charter.

This draft was contained in the Committee's report of 26th October, 1955,Document 403, and is referred to later in this report as " the October draft. "

When it was considered by the Assembly in October, 1955, a certain number of criticisms of the draft were expressed, particularly by members of the Committee on Economic Questions, which had in fact asked that the debate should be postponed, as they had had insufficient time to consider the economic aspects of the draft Charter (Doc. 407).

The Assembly then adopted its Order 79, referring the draft Social Charter to the Committee on Social Questions and the Committee on Economic Questions with instructions that they jointly examine any amendments proposed and appoint representatives who, together with representatives of other competent committees, would discuss the question with the governmental Social Committee, with a view to the adoption of a recommendation in the course of the Eighth Session of the Assembly.

The two Committees continued their work on the draft Charter during the inter-session.

The Committee on Economic Questions had expressed its preference for drafting a statement of the principles which the Assembly would wish to see incorporated in a convention, with the intention of leaving the actual drafting to the governmental Social Committee.

However, in view of the determination of the Committee on Social Questions to present a draft Charter to the Assembly and of the fact that a detailed draft had already been presented to and given a first reading by the Assembly, the Committee decided to accept the idea of a detailed draft. It accordingly considered the revised draft Charter article by article, made a number of amendments, and submitted the amended text (Doc. AS/EC (7) 24) to the Committee on Social Questions as a bloc amendment to the October draft (Doc. 403).

In adopting this text the Committee on Economic Questions proposed the deletion of those parts of the October draft relating to the creation of an Economic and Social Council. Instead, it proposed :

a. that the implementation of the Charter should be left to the governmental Social Committee; and

b. that a separate Economic and Social Conference should be called periodically to discuss various economic and social questions of interest to the Council of Europe.

Further explanations on this point arc given in section 4 of this report below.

The Committee on Social Questions met in Paris on 9th March, 1956, and accepted by majority vote most of the amendments proposed by the Committee on Economic Questions including the disjunction of the Economic and Social Council from the Social Charter.

Sections 2, 3, 4 and 5 below explain the main changes which have been made to the October draft (Doc. 403).

2.2. 2. Part I of the Social Charter - (Principles and objectives of social policy)

Part I of the new draft remains a statement of principles and objectives of social policy, and this is now brought out more clearly in the heading. It follows the same general lines, and deals with the same subjects as the October draft (Doc. 403).

In general terms, the aim of the Committee on Social Questions in accepting by a majority most of the amendments proposed by the Committee on Economic Questions has been to improve the prospects of the Social Charter by commanding the support necessary for its ratification by the national parliaments.

At the suggestion of the Committee on Economic Questions, paragraph 1 has been amended in several respects, with the aim of rendering it more concise without seriously affecting its substance. In particular, the Committee preferred the expression " the stability of their economies " to " the stability of the purchasing power of money ", as being a more comprehensive and more adequate term. However, contrary to the views of the Committee on Economic Questions, it was decided to retain the term " full employment ",[4] which is one of the aims already declared, not only in various Assembly Recommendations, but also in several texts of the International Labour Organisation, including the Declaration of Philadelphia. Paragraphs 6 and 7 of the earlier text, which refer specifically to the right to work and the share of workers in the fruits of their labours, have been retained contrary to the views of the Committee on Economic Questions. Moreover, the idea of workers' participation in the management of the undertaking by which they are employed has been inserted in the text of paragraph 7.

In paragraph 11, the idea of the collective responsibility of the High Contracting Parties for the economic expansion of their metropolitan under-developed areas has been retained. This was felt by the Committee on Economic Questions to encroach too drastically upon the sovereign rights of the Governments. The Committee on Social Questions rejected this argument on the ground that the use of the word •" collectively " accorded with the principle of a common European policy. Obviously each country is responsible for its own underdeveloped areas; nevertheless, the Council of Europe (Strasbourg Plan) and the O. E. E. C. (Vanoni Plan) have recognised the principle of collective responsibility for under-developed areas. The question at issue, therefore, is that of accepting the idea of collective responsibility in a moral sense and in a spirit of European solidarity.

2.3. 3. Part II of the Social Charter - (Economic and social rights)

Part II of the new draft remains the principal operative text, containing the legal obligations which the Contracting Parties will assume in the social field.

Broadly speaking, the main changes in this part of the Charter introduced by the bloc amendment of the Committee on Economic Questions and accepted for the most part by a majority of the members of the Committee on Social Questions affect :

1. the method of presentation of the rights embodied in the Social Charter;
2. the scope of the binding obligations;
3. the recommendations concerning specific economic policies as means of attaining the various objectives of social policy.

Most of the criticisms of the Committee on Economic Questions related to the scope of the " rights " laid down in the Charter and to their economic and political implications.

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4. The Committee on Economic Questions proposed that this be replaced by the expression : " a high and stable level of employment. "

In the October draft (Doc. 403), the structure of all the Articles setting forth " rights " was the same, each beginning with a declaration relating to the subjective aspects of a " right ", and continuing with an enumeration of the objective conditions necessary for its exercise. Rights were thus defined in terms of the ways and means of making them effective and obligations were expressed in terms of precise policies.

The Committee on Economic Questions proposed a change, which was accepted by the Committee on Social Questions by majority vote. It believed that the " right to work " and other social " rights " of a similar character might be recognised as moral rights or natural rights, but could not be recognised as legal rights; if the " right to work " were a legal right it would be legally enforceable, but everyone knows that this is not the case. It would therefore be misleading to state " everyone has the right to work " in an international convention imposing legal obligations on the signatory Governments, even though such affirmations can be found in the Universal Declaration of Human Rights and similar documents which do not constitute legal commitments.

Generally speaking, it was felt that it would raise vain hopes — and result in disappointment — to proclaim as " rights " things that arc by nature ideals and cannot reasonably be expressed otherwise than in declaratory form.

On the other hand, it seemed to be essential to define as clearly as possible those social desiderata which can realistically be formulated as binding obligations on the part of the signatory Governments.

The structure of the operative articles of the Charter, as amended by the Committee on Economic Questions and accepted by the majority of the Committee on Social Questions, can thus schematically be described as follows :

The term " right " is used in the heading of each article and here only. This use expresses the solemn character of the following-provisions without extending their legal character beyond what is explicitly set out in the text of the article. The first part of the text of an article states the recognition by the signatories of a principle or objective of social policy relating to the right in question. This in turn is followed by a description of what the signatory Governments undertake to do to ensure the implementation of the relevant principle or objective of social policy. In this part of the article pains have been taken to define obligations in terms of precise social measures and to avoid reference to general or specific economic policies as being conducive to or necessary for the realisation of any given social policy.

Briefly, the reasons for deciding to avoid the procedure followed in the October draft—recommending or binding Governments to specific economic policies, as a means of attaining given social objectives—are as follows :

It lies in the nature of economic policies to be the subject of continually fluctuating political controversy, and it would not seem to lie within the purview of the Charter, which is intended to be a lasting framework of European social policy, to express in such matters a preference which may soon be outmoded.

Secondly, at the present stage of European collaboration in matters of social policy, it would appear indispensable to avoid too doctrinaire an approach if a majority of member countries are to ratify the Charter.

Further, the state of advancement of the economies and of the political institutions of the countries to which the Charter would apply vary considerably and are also in constant flux; not only are the starting-points different, but the range of possible economic measures will also vary from country to country and from time to time.

fn Article 2 (2) the provision concerning retirement at the age of 65 has been retained by the Committee on Social Questions, in opposition to the view of the Committee on Economic Questions, which wished it to be deleted on two grounds : (a) it seemed hardly appropriate to specify a definite age, since policy in this matter tends to vary considerably from country to country; (b) the present trend seems to be in favour of a higher age of retirement.

Articles 8, 9 and 19 of the October draft (Doc. 403) have been deleted, the first-—• relating to the protection of workers' savings and progressive opportunities of becoming owners of real and personal property-—because the proposed measures would not be acceptable to the Governments in the form of obligations, the second—relating to moral and material interests in scientific, literary or artistic production-—- because the subject is already dealt with elsewhere, particularly in the Berne and UNESCO Conventions, the third—relating to the right to take part in cultural life and to enjoy the benefits of scientific progress—because it seemed out of place in a Charter devoted to social aims.

2.4. 4. Part III of the Social Charter - (Implementation of the Social Charter)

The draft Social Charter prepared by the Committee on Social Questions last year (the October draft) proposed that there should be created within the framework of the Council of Europe a European Economic and Social Council and that this new organ should be given the task of supervising the implementation of the Charter.

The idea of creating a European Economic and Social Council had been accepted by the Assembly as long ago as January, 1953, when it adopted its Resolution 26, expressing an opinion on the draft Treaty for the creation of a European Political Community, elaborated by the Ad Hoc Assembly.

The Committee on Economic Questions ; stated that it was opposed to the creation of a ' European Economic and Social Council. It ; pointed out that Resolution 26 of January, 1953 related to various methods of establishing links between the Council of Europe and the proposed Political Community but that, as this Community had never been created, the whole basis of Resolution 26 had ceased to exist. Moreover, it did not consider the Economic and Social Council an appropriate body for the implementation of the Social Charter. This view was based on two arguments, one positive and one negative.

Positively, the Committee felt that it must necessarily be the Governments that implement that Charter and that the supervision of its implementation should as a matter of principle be kept within the existing framework of the existing organs of the Council of Europe. Negatively, it was not convinced of the need of an Economic and Social Council either for the purpose of implementing the Charter or for that of assuring closer association with the work of the Council of Europe of employers', workers' and other non-governmental organisations, since these objectives may be attained by other means.

In fact, it had most serious misgivings about instituting an Economic and Social Council along the lines suggested inDocument 403, on account of the corporative character of its structure. The Committee on Economic Questions felt that the existence of the Economic and Social Council would in practice mean a surrender of the Assembly's competence in the social field to an organ over which, by the very nature of its composition, it would have very little influence.

The Council of Europe would derive considerable prestige from shouldering itself the responsibility of supervising the implementation of the European Social Charter. A decision to the contrary would seriously jeopardise the Council's standing in public opinion. In particular, it would divest the Assembly of an important means of rallying the interest and support of the working classes in its activities. Further, the Committee on Economic Questions was convinced that the existing organs of the Council of Europe—the Consultative Assembly and the Committee of Ministers, assisted by its Social Committee-—eould quite adequately cope with the new function of supervising the implementation of the Charter.

The majority of the members of the Committee on Social Questions shared this view.

Accordingly, the principles governing the implementation of the Charter set forth in Part IV of the October draft have been replaced by a new statement whereby the Governments would agree that a programme of implementation should be drawn up by the governmental Social Committee and submitted to the Assembly for its opinion.

On the basis of the proposals of the Social Committee and the opinion of the Consultative Assembly, the Committee of Ministers would approve the programme of implementation and forward it to the high Contracting Parties for action. At the same time the programme would be communicated to the Consultative Assembly for information.

Furthermore, the Governments would submit to the Council of Europe annual reports for examination by the Social Committee and by the Assembly. Thus the system suggested by the Committee on Economic Questions and accepted by a majority of the members of the Committee on Social Questions places the main responsibility for the implementation of the Charter upon the governmental Social Committee. However, the Assembly will be kept fully informed and will be entitled to express its opinion at any time.

2.5. 5. Part IV of the Social Charter - (Final Provisions)

The final clauses contain the usual provisions found in an international convention of this sort. The only point to be noted is that the number of ratifications required for the Charter to enter into force has been reduced from ten (in the October draft) to five.

This Report was approved unanimously by the Committee on Social Questions, though certain members reserved their position on particular points.

Personal note by the Rapporteur :

I have done my duty as a rapporteur by, I believe, faithfully reporting the majority decisions taken by the Committee on Social

Questions. Some members have, however, stated that they reserve the right to submit to the Assembly amendments to some of the articles adopted by a majority decision.

3. D. Draft Recommendation on a European Economic and Social Conference

The Assembly,

Considering that it is desirable to associate more closely with the work of the Council of Europe the national and international organisations which represent employers and workers ;

Considering that the Council would be assisted in the discharge of its functions by receiving the advice of the said organisations on proposals of an economic and social character which may be submitted for consideration by either of its organs,

Recommends that the Committee of Ministers should invite the International Labour Organisation to collaborate with the Council of Europe in convening, and should vote such funds as may be necessary for, a tripartite European Economic and Social Conference, to be organised on the following lines :

1. The Conference should be held under the joint auspices of the Council of Europe and the International Labour Organisation and should meet on the premises of the Council of Europe.
2. The Conference should consist of representatives of Governments, employers and workers from the Member States of the Council of Europe.
3. In addition, there should be invited to send observers to the Conference such international non-governmental organisations competent in the economic and social field as may be determined by the Committee of Ministers, the Bureau of the Assembly and the Governing Body of the I. L. 0.
4. The Committee of Ministers, the Consultative Assembly of the Council of Europe and the Governing Body of the I. L. 0. should be able to submit to the Conference for discussion projects of an economic or social character under examination by the Council or by the Organisation. The Conference should give its opinion on such projects, which would be communicated to the Committee of Ministers, to the Assembly and to the Governing Body.

4. E. Report of M. Haekkerup on a European Economic and Social Council

The draft Social Charter submitted to the Assembly by the Committee on Social Questions in October, 1955 (Doc. 403, which is referred to below as the " October draft ") contained a proposal for the creation of a European Economic and Social Council, together with an Explanatory Memorandum by M. Dehousse.

The origin of this proposal was Resolution 26, adopted by the Assembly on January 17th, 1953. This resolution related to the draft treaty for the creation of a European Political Community, which was then being elaborated by the Ad Hoc Assembly. Part II of the Resolution, dealing with questions of association and liaison between the Council of Europe and the Political Community, proposed the creation of an Economic and Social Council with consultative functions representing the fifteen Members of the Council of Europe. In May, 1953 the Assembly instructed the Committee on Social Questions and the Committee on Economic Questions to prepare a draft Recommendation for the creation of such a body (References 23 and 26).

The two committees set up a Joint Sub-Committee which was instructed to do this work. For various reasons which it is not necessary to describe in this report, the Joint Sub-Committee made little progress with its work before the summer of 1955. By that time the Committee on Social Questions had been instructed to prepare a draft Social Charter and had appointed a Working Party to elaborate a first draft. This Working Party considered that it would be appropriate to include provisions for the creation of an Economic and Social Council in the draft Social Charter and to entrust this Council with the task of supervising the implementation of the Charter. The Working Party therefore held a meeting in June, 1955 with the Joint Sub-Committee on the Economic and Social Council, at which these proposals were agreed. They were then submitted to the two parent committees in September, 1955.

The Committee on Social Questions approved these proposals at its meeting on September 10th, 1955, but the Committee on Economic Questions, which met nine days later, felt unable to do so without further study of the problem.

The text approved by the Committee on Social Questions was then submitted to the Assembly in October, 1955 (Doc. 403) and a debate on first reading was held on 18th October. Subsequently the question was referred back to the two committees for further examination in the light of the discussion which had taken place (Order 79).

The Committee on Economic Questions meeting in January, 1956, was of the opinion that it was not desirable to include in the Social Charter provisions for the creation of an Economic and Social Council; its reasons for this belief have been summarised above in theReport of M. Heyman. But the Committee went further and expressed its doubts as to the advisability of setting up a Europe Economic and Social Council at all. It drew attention to the fact that when the Assembly, in its Resolution 26 of 1953, took a decision in principle to set up an Economic and Social Council, this organ was intended to form one of the links between the Council of Europe and the European Political Community; in view of the subsequent setback suffered by this project, the Committee thought it necessary that the Assembly should reconsider the matter in the light of present circumstances.

The Committee on Economic Questions went on to record its full agreement with the view expressed by M. Dehousse in his explanatory memorandum contained in the October draft that an effort should be made to associate Employers', Workers' and other non-governmental Organisations more closely with the work of the Council of Europe, and considered that this very important question deserved to be thoroughly examined by the Assembly and the Committee of Ministers. It then proposed that an Economic and Social Conference comprising both national and international organisations representing employers, workers, consumers and other professional groups should be held regularly in order to discuss European economic and social problems. This would, it believed, meet the fundamental purpose of the Committee on Social Questions without giving rise to the difficulties of an institutional character which would be involved in creating an Economic and Social Council as a third organ of the Council of Europe with statutory powers.

The Committee on Social Questions considered these views at its meeting on 9th March, 1956 and agreed, by a majority vote, not to recommend to the Assembly the creation of an Economic and Social Council. The Committee was of opinion that the need for creating yet another organ of international co-operation in Europe had not been clearly established, that there would be a great danger of duplication of work if it were to be created and that the chances of its ratification by the national parliaments were slender.

The Committee was in full agreement, however, that it was desirable to find some suitable procedure whereby the Council of Europe could obtain the advice of qualified representatives of employers and workers on its activities in the economic and social fields; it also attached great importance to the idea of associating these groups in some way with the work of the Council and, so far as possible, obtaining their support for its economic and social projects. It did not appear necessary, however, to create new organs with statutory powers, some of which would rival, or encroach on, those of the Assembly itself.

The Committee then considered the proposal of the Committee on Economic Questions that the Council of Europe should convene an annual Economic and Social Conference comprising both national and international organisations representing employers, workers, consumers and other professional groups. While fully sympathising with the idea underlying this proposal, the Committee feared that the procedure envisaged was somewhat complicated and might tend to duplicate the tripartite conferences of governmental representatives, employers and workers which arc convened by the International Labour Organisation.

The Agreement concluded between the Council of Europe and the I. L. 0. on 23rd November, 1951 envisages the possibility that the Council of Europe may wish to convene European conferences of a tripartite character, and provides that in such cases the Committee of Ministers will propose to the Governing Body of the I. L. 0. that the latter should convene the conference. It seemed to the Committee that this provision might provide the solution to the problem it was considering.

The consultation of employers and workers and their association with the economic and social activities of the Council of Europe could take place within the framework of a tripartite conference convened by the I. L. 0. at the request of the Council, if the I. L. 0. would agree to do so on conditions that are mutually acceptable. It is to be noted that there is nothing in the Agreement with the I. L. 0. which obliges the latter to convene such meetings at the request of the Council; it is left for the Governing Body to take a decision on any request that may be made to it. Nevertheless, the excellent relations which exist between the two organisations make it seem probable that the Governing Body would agree to a reasonable request of this sort. At the same time, it is equally to be noted that there is nothing to prevent the Committee of Ministers, when it addresses its

request to the I. L. 0., from making such proposals about the organisation of the meeting as it considers proper; nor is the Committee of Ministers bound in any way if its proposals are not accepted by the Governing Body. In other words, the conditions under which such a tripartite meeting should be held are a subject for negotiation between the Committee of Ministers and the Governing Body and neither party is bound in any way if the negotiations should prove unsuccessful. (This point has been made in order to allay certain fears which have been expressed to the effect that if the Council invites the I. L. 0. to convene the meeting, it will lose all control over its management).

Against this background, the Committee on Social Questions considered that the best procedure for consulting employers and workers and associating them with the work of the Council of Europe would be that the Committee of Ministers should invite the I. L. 0. to convene a European Regional Conference of a tripartite character limited to representatives of the Member States of the Council of Europe. Such a conference should be convened by the I. L. 0., in accordance with the terms of the Agreement, but should be held under the joint auspices of the two organisations, in view of the fact that one of its objects is precisely to associate employers and workers more directly with the work of the Council. For the same reason, the conference should be held at Strasbourg—or, if more than one is held, alternately at Strasbourg and Geneva.

Both the organs of the Council of Europe as well as the GoverningBody of the I. L. 0. should have the right to propose items for the Agenda, which should finally be settled by mutual agreement. Responsibility for the preparation of the necessary documents (which is a matter of considerable importance) could no doubt be settled by agreement between the two organisations, though it would probably be desirable that the I. L. 0., with its greater resources and experience should assume the major responsibility in this respect, if it would be willing to do so.

It may be desirable that such tripartite regional conferences should be held annually or at other regular intervals. It would seem wise, however, to leave this question open for the present and take a decision about the future procedure in the light of the results achieved by the first meeting.

With these considerations in mind, the Committee on Social Questions has prepared the draft Recommendation set out above, which it has the honour to submit to the Assembly.

This report was approved unanimously by the Committee on Social Questions, though certain members reserved their position on particular points.